

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT NO. DAR _____
APPEALS COURT NOS. 2016-P-1624 AND 2016-P-1625

COMMONWEALTH,
Appellee

v.

FERNANDO PEREZ,
Appellant

APPLICATION FOR DIRECT APPELLATE REVIEW ON APPEAL FROM THE
HAMPDEN COUNTY SUPERIOR COURT

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APPLICATION FOR DIRECT APPELLATE REVIEW

For the reasons stated below, Fernando Perez requests that his Application for the Direct Appellate Review of his two related Appeals Court cases be granted.

I. ISSUES OF LAW RAISED BY THE APPEAL

Should this Court consider whether the consecutive sentences of a juvenile convicted of a crime less than murder are unconstitutional under the Eighth Amendment to the United States Constitution and articles 12 and 26 of the Massachusetts Declaration of Rights, where they total 34 years imprisonment and make him ineligible for parole for 27.5 years, well beyond the time juveniles convicted of first degree murder are eligible for parole.

II. STATEMENT OF PRIOR PROCEEDINGS

On February 16, 2001, seven indictments were returned against seventeen-year-old Fernando Perez, and on March 2, 2001, six additional indictments were returned. In total, the Commonwealth brought: three indictments charging armed robbery, (Nos. 01-120-1, 3, and 5); four indictments for use of a firearm while committing a felony (Nos. 01-120-2, 4, 6 and 01-154-3); two indictments for unlawful possession of a firearm (No. 01-120-7 and 01-154-5); an indictment for armed

assault with intent to murder (No. 01-154-1); an indictment for armed assault with intent to rob (indictment No. 01-154-2); an indictment for assault and battery by means of a dangerous weapon (indictment No. 01-154-4); and an indictment for discharging a firearm within 500 feet of a dwelling (indictment No. 01-154-6). (Ex/1-13b)¹

All charges were tried in one jury trial, before McDonald, J., that began on November 20, 2001. On November 29, 2001, the jury found Perez not guilty of armed assault with intent to murder (No. 01-154-1) and guilty on all remaining indictments (Tr. 6/181-187).

At the January 4, 2002, sentencing hearing, the court determined the indictments for possession of a firearm while committing a felony merged with the greater offenses, and vacated those lesser offenses. (SH/38-40) The court sentenced Perez in both cases as follows: Indictment 01-120-1, 5 years to 7 ½ years; 01-120-3, 5 years to 5 years and a day, consecutive with 01-120-1; 01-120-5, 10 years probation consecutive with 01-154-4; 01-120-7, 2 ½ years concurrent with 01-120-3; 01-154-2, 7 ½ years to 10 years consecutive with 01-120-3; 01-154-4, 9 years and 364 days to 10 years consecutive with 01-154-2; 01-154-5, 2 ½ years

¹ Docket entries are in Addendum, and cited as (A/pg#).

concurrent with 01-120-7; and 01-154-6, 1 day concurrent with 01-154-5. The sentences total 34 years imprisonment. The consecutive sentences create a parole eligibility date after serving 27.5 years. (SH/55-57)

On March 7, 2015, Mr. Perez filed an identical Motion for Relief Pursuant to Mass. R. Crim. P. 30(a) in both superior court cases, requesting a resentencing hearing. He argued his consecutive sentences totaling thirty-four-years imprisonment are unconstitutional under the Constitution and the Massachusetts Declaration of Rights because he was a juvenile at the time of the crimes and he is ineligible for parole 12 ½ years later than a juvenile convicted of first degree murder.

The court, Ford, J., denied the motions on October 26, 2016. Motions to Reconsider were denied on November 14, 2016. A notice of appeal was filed on November 21, 2016. The two cases were docketed in the Appeals Court on December 2, 2016, in two under two different docket numbers: 2016-P-1625 and 2016-P-1624. Both Appeals Court cases are included in this single Application for Direct Appellate Review.

III. SHORT STATEMENT OF FACTS

The crimes committed by Fernando Perez were committed with his older uncle, who had a criminal history and had recently been released from prison.

(NTM Ex./33) The crimes all occurred in downtown Springfield within approximately thirty minutes of each other.²

Trial Facts. At about 1:00 am on December 23, 2000, Erich Lee Janes and his wife were at the train station in Springfield to pick up their daughter. After noticing a car parked very close to his with two people sitting in it, Janes heard Perez tell him that it was a robbery and to hand him his wallet. Both Janes and his wife gave them their wallets. (Tr. 3/48-52)

At about 1:20 a.m. on December 23, 2000, Jose Ramirez was walking in Springfield when a car parked near him and he heard the driver tell the passenger to hurry up. Then Perez produced a gun and asked Ramirez for his coat. (Tr. 2/243-248).

In the early morning hours of December 23, 2000, Perez approached and pointed a gun at Carlo D'Amato, an off duty detective with the Springfield Police Department, and said he was going to rob him. When D'Amato said, "I'm a Springfield police officer and you should think about what you're doing" and reached for his badge, Perez shot him, ran, and continued to shoot his gun as he ran. (Tr. 2/210-213). Mr. D'Amato

²See *Commonwealth v. Perez*, 62 Mass.App.Ct. 912, 915 (2004).

suffered serious internal injuries that required multiple surgeries and caused him severe pain. (Ex/42-45)

Sentencing Hearing. The sentencing hearing occurred on January 4, 2002. Dr. Pamela Dieter-Sands evaluated Perez (and had testified at trial) and her report was before the judge at sentencing. The report detailed the abusive household at the hands of his father:

"Mr. Perez lived his first twelve years under the extreme stress of [his father's] violence and the credible and persistent threat of death over his mother, him, and his siblings. . . . Another source of traumatic stress [was] the repeated relocation of the family [to hide from his father]. . . . Repeated moves of this kind disrupt attachments to teachers, friends, neighbors and extended family . . . Next, the uncle who had nurtured and supported him was murdered in spring of 2000. This uncle had partially fulfilled Mr. Perez' longing for a loving father figure, a strong ally, and a role model of a good man." This condition was acute at the time he met his uncle Tito Abrante for the first time, about two weeks after his uncle Eddie's death. . . . Mr. Perez almost immediately became involved with his uncle Tito Abrante. At that time he was depressed, needy, impressionable, eager to connect, and cut off from the attention of his mother, who was preoccupied by her own loss. [Tito Abrante] used physical violence or threats to control Mr. Perez. . . .

[Around March 2000³ a school psychologist] saw Mr. Perez as emotionally fragile and in need of mental health care. [A licensed clinical social worker] noted that Mr. Perez "walked on eggshells" and "tried to please others all the time." He noted

³ Before the crimes in this case.

"This kid was so full of PTSD (Post Traumatic Stress Disorder) that he was just caught up in his inner struggles" and said "I did not find him very strong – not a leader, not an individual that could make it on his own." . . . ,

In summary, Mr. Perez is an immature and easily confused person, eager to please, longing for love and acceptance by a powerful male figure, and very poorly prepared to assess and understand the behavior and motivations of such a figure. He has very low intelligence, is generally fearful, has strong dependency needs, and is compliant with and overly tolerant of others. He has poor judgment, and, based on his unusual past experiences, sees even deviant demands as valid. He has poor comprehension of complex situations, and does not understand people, their motives, and their views of him with sophistication. It appears that he was and is very vulnerable to powerful male figures, and is easily intimidated, manipulated, and controlled.

(Psych. Rpt. at 9-10, Rule 30(a) Ex/22-23)

A Presentence Investigation Report was prepared by the probation department. The report concluded with this "Evaluation Summary":

The defendant was born in Puerto Rico, moving to the United States in 1988. While in the United States, his [family's] living arrangements have been sporadic, having to relocate due to threats made on their lives by his biological father. This defendant's childhood was unstable and traumatic, leaving many emotional scars.

Up to the point of his Uncle Tito entering his environment, this defendant was making attempts to stabilize his life through counseling, striving to get his GED, enrollment in the Job Corps, and was law abiding thus far. In statements made to the Springfield Police Department and this Probation Officer, this defendant believed that if he did not follow through with his

uncle's orders, he would be subjected to bodily harm. Given his history with male role models and their influence on his life, it is not surprising that Fernando felt without options, but to submit to his uncle's demands.

(Presentence Report, pp. 7-8; Rule 30(a) Ex/36-37)

The sentencing court's response to the arguments that Mr. Perez's age, upbringing, and mental health issues should serve as mitigating factors at sentencing, reveal that the sentencing judge did not have the benefit of later research and case law on brain development in youths:

I recognize, as [trial counsel] has eloquently argued, that at the time of these offenses Mr. Perez was only 17 year old. And young men at the age of 17 frequently do not have the maturity to make good judgments. But the law makes them responsible for their acts as adults, nonetheless. And the decision to accept a handgun and to commit three armed robberies is such bad judgment that it cannot be excused by age or by any of the other circumstances of Mr. Perez's life.

I recognize that Mr. Perez has intellectual limitations, but he's capable of functioning as a mature adult, capable of making decisions about his life. I appreciate the difficulty in his upbringing, I appreciate that he may not have had enough help to deal with the problems created by his turbulent home life, help that many parents are able to provide and some parents are not.

I recognize that these factors have made Mr. Perez susceptible to the influence of adults (all children are) and perhaps particularly susceptible to the influence of his uncle. But the fact that the adults in his life have let him down does not excuse his behavior.

And the jury considered these factors in evaluating the offense of duress and concluded that Mr. Perez did not act under duress. And the appellate courts will have an opportunity to review my instructions on that offense and my rulings on the scope of testimony that I allowed with respect to that defense.

There's no question that Mr. Perez was old enough, intelligent enough, capable of knowing right from wrong. No defense of criminal responsibility was set forth in this case. [Trial counsel] asks me in some sense to excuse Mr. Perez's crimes in my decision as to the sentence. But I cannot. I have sympathy for Mr. Perez. I do not want any child to have to deal with all that Mr. Perez has had to deal with. But every sentence that I impose involves defendants who stand before me with a multitude of problems, personal and social. Mr. Perez is old enough, intelligent enough, to blame his uncle for his conduct, and such blame may be appropriate. It certainly appears that his uncle had some significant responsibilities for the events of December 23. But so, too, was the defendant responsible.

[Trial counsel] suggests, and statements made by Mr. Perez suggested, that he was acting under threats from his uncle. Psychologist reports suggest that he is compliant and acts to please adults. So the psychological information that I reviewed suggests that it could have been either. But whatever the answer, Mr. Perez will continue to be vulnerable to the same bad influences. He will still be of low intelligence dealing with mental health issues, of little education, and society will continue to be at risk of his conduct.

(SH/47-48)

The sentences totaled 34 years imprisonment. As the court intended, the consecutive sentences (including ten years probation after prison release) create a parole eligibility date after serving 27.5 years. (SH/55-57)

Motion for Relief Under Rule 30(a). On March 7, 2015, the defendant filed a Motion for Relief Pursuant to Mass. R. Crim. P. 30(a). He requested a resentencing hearing because his consecutive sentences totaling thirty-four-years imprisonment are unconstitutional under the federal constitution and the Massachusetts Declaration of Rights, because he was a juvenile at the time of the crimes and he is ineligible for parole 12 ½ years later than a juvenile convicted of first degree murder.

Applying the factors listed in *Commonwealth v. Costa*, 472 Mass. 139, 147-149 (2015), Mr. Perez submitted exhibits showing: he has maintained close connections with family—his daughter, his wife (whom he has known since high school), his mother, and his five siblings; he has been employed regularly in prison and is the janitor for the dinning hall; he has received only eight disciplinary reports in fifteen years and none have been for violence; he obtained his GED on January 28, 2011, and has completed the Alternatives to Violence and Advanced Alternatives to Violence programs (and has been placed on the wait list for the Emotional Awareness, Jericho Circle, and Welding programs); and DOC's Personalized Program Plan documented both his Risk of Violence and his Risk of Recidivism as low.

Applying the Miller factors, Mr. Perez argued that his crime reflected the hallmark features of his chronological age of seventeen: that his home environment of chaos, violence and loss had a damaging impact on his personality and functioning that made him easily intimidated, manipulated, and controlled by his uncle's powerful male figure, and that prison documentation proved he could be rehabilitated.

On October 26, 2016, the judge (not the trial judge), Ford, J., denied the motion, stating:

I conclude that a sentence providing for parole eligibility after 27.5 years is not the functional equivalent of a life sentence without parole, and therefore that the sentence imposed in this case was not constitutionally infirm. See *Commonwealth v. Costa*, 472 Mass. 139, 146 (2015). The sentence is a far cry from those out-of-state sentences noted in *Commonwealth v. Brown*, 466 Mass. 676, 691 n. 11 (2013) (e.g. sentences providing for parole eligibility after 60 years and 75 years). Because the sentence does not violate the state or federal constitution, there is no basis under Mass. R. Crim. P. 30(a) to vacate it. Moreover, I was the trial judge in the case of the co-defendant, and because I am familiar with the facts of the case, I conclude that the carefully crafted sentence of Judge MacDonald does not shock the conscience or offend fundamental notions or human dignity. For these reasons, as well as for those set forth in the Commonwealth's opposition, this motion is Denied without a hearing.

(Appendix/**)

A Motion to Reconsider, filed on November 10, 2016, pointed out that at the uncle's (Tito Abrante)

sentencing hearing the prosecutor argued Abrante was "a moving force in relation to these crimes occurring" (Vol. 4, p. 136) and "[Abrante] has ruined his nephew's life, who will now spend 27 years in prison for him putting the gun in his nephew's hand" (Vol. 4, p. 137).

On November 14, 2016, the judge denied a Motion to Reconsider. (Appendix/**)

IV. ISSUES OF LAW RAISED ON APPEAL

Whether, in order to satisfy substantive and procedural due process, a juvenile convicted of a crime less than murder should be resentenced to a term that allows him release no later than one convicted of first degree murder.

Whether this constitutional issue and question of first impression should be submitted for final determination by this Court.

V. ARGUMENT

A. PETITIONER'S CONSECUTIVE SENTENCES TOTALING 34 YEARS IMPRISONMENT FOR CRIMES HE COMMITTED AS A JUVENILE, ARE UNCONSTITUTIONAL UNDER THE EIGHTH AMENDMENT AND ARTICLES 12 and 26 BECAUSE THEY MAKE HIM INELIGIBLE FOR PAROLE FOR 27.5 YEARS, WELL BEYOND THE TIME JUVENILE'S CONVICTED OF FIRST DEGREE MURDER ARE ELIGIBLE

Fernando Perez has served fifteen years in prison. While other adolescents who committed first degree murder at the time of Perez's lesser crimes are now eligible for potential release after parole hearings, he will not be parole eligible for another 12.5 years. This untenable distinction is unjust and cannot be reconciled with the requirement, under art. 26 and the Eighth Amendment, "that criminal punishments be proportionate to the offender and the offense." *Diatchenko v. District Attorney for the Suffolk Dist.*, 466 Mass. 655, 671 (2013). This Court's reasoning in *Commonwealth v. Costa*, 472 Mass. 139 (2015) should be applied to Mr. Perez, where it is clear from the record the sentencing court, without the benefit of later research and law, felt constrained to sentence Perez as if he had the maturity and ability of an adult.

Case Law on Juvenile Sentencing. *Roper v. Simmons*, 543 U. S. 551 (2005) invalidated the death penalty for juveniles under 18, finding a juvenile's character is not as "well formed" as an adult's, his traits are

"less fixed," and his actions less likely to be evidence of irretrievable depravity. It cited studies showing only a small proportion of adolescents who engage in illegal activity develop entrenched patterns of problem behavior. *Id.*, at 570.

Graham v. Florida, 560 U.S. 48 (2010), prohibited juvenile life without parole sentences for non-homicide offenses under the Eighth Amendment, finding the unique developmental characteristics of juveniles require a distinctive treatment under the Constitution. Three essential characteristics that distinguish youth from adults are youth lack maturity and responsibility, they are vulnerable and susceptible to peer pressure, and their characters are unformed.

Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of "irretrievably depraved character" than are the actions of adults. [*Roper v. Simmons*, 543 U.S. 551 (2005)] at 570. It remains true that "[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed." [Citing *Roper*]

Graham, at 68.

Graham relied upon emerging research confirming the distinct emotional, psychological and neurological status of youth. [Since *Roper*] "developments in psychology and brain science continue to show

fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence." *Id.* at 68. Juveniles are more likely to be reformed than adults *Id.*, and criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed" *Id.* at 76.

Miller v. Alabama, 132 S. Ct. 2455, 2460 (2012), held that sentencing cannot render "youth (and all that accompanies it) irrelevant" to the sentencing calculus. *Id.* at 2469. Not only do "children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk taking", they "are more vulnerable ...to negative influences and outside pressures including from their family and peers" . . . "have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings",⁴ [their] character is not as well-formed as an adult's [so their] traits are less fixed and his actions less likely to be evidence of irretrievable depravity." *Id.* at 2464, quoting *Roper*, 543 U.S. at 569. Failure to consider the fundamental differences between children

⁴ This factor is particularly relevant to the facts of Perez's case.

and adults not only casts doubt on the substantive fairness of the sentence, it also infects the integrity of the dispositional process. *Id.* at 2464-65.

Miller requires a sentencer to consider an offender's youth and attendant characteristics before imposing a particular penalty. *Id.* at 2471. At a minimum, the court must consider relevant mitigating factors including: (1) The juvenile's age at the time of the offense and its hallmark features - "immaturity, impetuosity and failure to appreciate risks and consequences;" (2) The juvenile's "family and home environment that surrounds [him] and from which he cannot usually extricate himself - no matter how brutal or dysfunctional;" (3) "The circumstances of the . . . offense, including the extent of [his] participation in the conduct and the way familial and peer pressures may have affected him;"⁵ (4) The possibility that the child may have been "charged and convicted of a lesser offense if not for the "incompetencies associated with youth"; and (5) The possibility of rehabilitation - his sentence may not be imposed in a way that "disregards the possibility of rehabilitation even when circumstances most suggest it." *Miller*, at 2468.

⁵ Mitigating factors (2) and (3) are particularly relevant to Perez's case.

Diatchenko v. District Attorney for the Suffolk Dist., 466 Mass. 655, 673–6746 (2013), and *Commonwealth v. Brown*, 466 Mass. 676 (2013) held that all juvenile life without parole sentences, even the non-mandatory ones, were unconstitutional under art. 26. Later, in *Commonwealth v. Costa*, 472 Mass. 139 (2015) the Court considered the effect of *Diatchenko* and *Brown* on Costa who, unlike Diatchenko and Brown, was sentenced to multiple consecutive sentences of life, making him ineligible for parole for thirty years. In a 30(a) motion, Costa moved to have his sentences run concurrent so he would be eligible for parole after fifteen years. *Id.* at 140. This Court held “a trial court judge, in resentencing a juvenile offender originally sentenced to multiple consecutive terms of life without the possibility of parole, may conduct a sentencing hearing to consider resentencing the juvenile offender to concurrent terms.” *Id.* at 141.

The Court’s reasoning applies directly to Perez’s case: “[The sentencing judge] could not have known of the reasoning underlying our decisions in *Diatchenko* and *Brown*. Those decisions were based on ‘current scientific research on adolescent brain development’ that led us to conclude that juvenile offenders are ‘constitutionally different from adults for sentencing

purposes.' [citations omitted] We cannot know that the judge would have imposed consecutive sentences had he known about the effect that decision would ultimately have, or had he known about the constitutional differences that separate juvenile offenders from adults. Accordingly, we conclude that resentencing is appropriate under these circumstances." *Id.* at 144.

Costa concluded: "[a] trial court judge, in resentencing a defendant who was under the age of eighteen at the time of his or her crime under Mass. R. Crim. P. 30(a) and this court's decisions in *Diatchenko* and *Brown*, may amend that aspect of the original sentence . . . At the resentencing proceeding, in addition to the factors considered at any sentencing⁶, the judge should consider (a) the *Miller* factors; (b) evidence regarding the defendant's psychological state at the time of the offense; and (c) evidence concerning the defendant's postsentencing conduct, whether favorable or unfavorable." *Costa* at 149. (Mr. Perez submitted this information through exhibits in his 30(a) Motion.)

⁶ "[a] judge may consider a variety of factors including the defendant's behavior, family life, employment history, and civic contributions, as well as societal goals of punishment, deterrence, protection of the public, and rehabilitation." *Costa* at 147.

Here, the sentencing judge's statements reveal he believed a request to consider Perez's youth and vulnerability at sentencing was a request that his crimes be excused instead of that his sentence be mitigated. The judge's statements also reveal he believed he could not consider the mitigating factors of youth: "And the decision to accept a handgun and to commit three armed robberies is such bad judgment that it cannot be excused by age or by any of the other circumstances"; "[his susceptibility to adult influence] does not excuse his behavior" (Ex/82-83); "No defense of criminal responsibility was set forth in this case" (Ex/84); "[Even assuming young men at the age of 17 do not have the maturity to make good judgments] . . . the law makes them responsible for their acts as adults, nonetheless." (Ex/82)

It was clear the sentencing judge did not have the social science research available today that shows that juveniles will mature and change: "Mr. Perez will continue to be vulnerable to the same bad influences. He will still be of low intelligence dealing with mental health issues, of little education, and society will continue to be at risk of his conduct." (Ex/85) Had the sentencing judge had the benefit of later social science research on juvenile brain development

and the benefit of Court decisions adopting this research and applying it to juvenile sentencing, the court would not have dismissed Perez's trauma history, psychological weaknesses, violent childhood, history of loss, or his capacity to mature and reform.

B. IN ORDER TO SATISFY SUBSTANTIVE AND PROCEDURAL DUE PROCESS, FERNANDO PEREZ SHOULD BE RESENTENCED TO A TERM THAT ALLOWS HIM RELEASE NO GREATER THAN ONE CONVICTED OF FIRST DEGREE MURDER

Following this Court's *Costa* decision, Costa was resentenced. In his order resentencing Costa to concurrent life sentences, the judge recounted the evaluation findings in Costa's juvenile transfer hearing that found him aggressive, disrespectful to authority and lacking in anxiety, fear, or remorse. However, Costa's resentencing judge noted, "at issue today is whether those character traits were fixed or whether by contrast they were the product of his age and a not yet fully developed brain . . . the defendant's institutional conduct over the last twenty-eight years answers that question convincingly." (*Costa* Order/8) After recounting Costa's good behavior and accomplishments in prison, the judge concluded: "Had the sentencing judge in 1994 had the benefit of the science relating to the development of the human brain and had evidence of the defendant's dramatic change in

attitude and character upon achieving adulthood, he likely would have imposed concurrent terms of life imprisonment. I do so now." Costa was resentenced to two concurrent life sentences for first-degree murder, making his parole eligibility at fifteen years (and immediately parole eligible).

At the present time, Fernando Perez's parole eligibility date is twelve and one-half years longer than is Louis Costa's (who was convicted of a double homicide).

It is settled law that the task of imposing a sentence on a defendant convicted of a crime rests with a judge in the trial court. *Commonwealth v. Woodward*, 427 Mass. 659, 683 (1998). The legislative grant of post-conviction power to the trial court to correct an illegal sentence recognizes judicial responsibility and authority to ensure that the sentence in a criminal case is consonant with justice. *See Commonwealth v. Gaulden*, 383 Mass. 543, 553, n.7 (1981). Moreover, a trial judge "must exercise his inherent power as necessary to secure the full and effective administration of justice." *Querubin v. Commonwealth*, 440 Mass. 108, 115 (2003); *Jake J. v. Commonwealth*, 433 Mass. 70, 77 (2000) (court has inherent authority to exercise its own legitimate powers).

Considering Mr. Perez's violent and traumatic family history, his psychological vulnerability (determined by a school psychologist and licensed clinical social worker before the crime occurred, and not an after the crime excuse), the power his older, criminal uncle had on him, his age of seventeen at the time of the crime, and his subsequent maturity, lack of criminal behavior, and self-improvement as demonstrated by his Department of Corrections record, the motion judge should have granted him a resentencing hearing.

CONCLUSION

In order to satisfy substantive and procedural due process, a juvenile convicted of a crime less than murder and sentenced fifteen years ago, before juvenile brain research was known and considered by the courts, should be resentenced to a term that allows him release no later than one convicted of first degree murder.

This appeal raises both a constitutional issue and a question of first impression. Therefore, this Court should grant the Application for Direct Appellate Review for a final determination of the issues.

Respectfully submitted,
Fernando Perez, by his attorney,

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CERTIFICATION

I certify that Application for Direct Appellate Review complies with the rules of court pertaining to the its filing, including Rules 11, 19, and 20 of the Mass. Rules of Appellate Procedure.

/s/ Elizabeth Caddick
Elizabeth Caddick

APPENDIX TO APPLICATION FOR DIRECT APPELLATE REVIEW

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0179CR00120 Commonwealth vs. Perez, Fernando R

Case Type	Indictment	Initiating Action:	ROBBERY, ARMED c265 §17
Case Status	Open	Status Date:	12/26/2006
File Date	02/16/2001	Case Judge:	
DCM Track:	I - Inventory	Next Event:	

All Information Party Charge Event Tickler Docket Disposition

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Party Charge Information

Perez, Fernando R - Defendant

Charge # 1 : 265/17/A-0 - Felony ROBBERY, ARMED c265 §17

Original Charge 265/17/A-0 ROBBERY, ARMED c265 §17 (Felony)
Indicted Charge
Amended Charge

Charge Disposition
Disposition Date 11/29/2001
Disposition Guilty

Perez, Fernando R - Defendant

Charge # 2 : 265/18B/A-3 - FIREARM IN FELONY, POSSESS c265 §18B

Original Charge 265/18B/A-3 FIREARM IN FELONY, POSSESS c265 §18B
Indicted Charge
Amended Charge

Charge Disposition
Disposition Date 01/04/2002
Disposition Dismissed

Perez, Fernando R - Defendant

Charge # 3 : 265/17/A-0 - Felony ROBBERY, ARMED c265 §17

Original Charge 265/17/A-0 ROBBERY, ARMED c265 §17 (Felony)
Indicted Charge
Amended Charge

Charge Disposition

Disposition Date 11/29/2001

Disposition Guilty

Perez, Fernando R - Defendant

Charge # 4 : 265/18B/A-3 - FIREARM IN FELONY, POSSESS c265 §18B

Original Charge 265/18B/A-3 FIREARM IN FELONY, POSSESS c265 §18B
Indicted Charge
Amended Charge

Charge Disposition

Disposition Date 01/04/2002

Disposition Dismissed

Perez, Fernando R - Defendant

Charge # 5 : 265/17/A-0 - Felony ROBBERY, ARMED c265 §17

Original Charge 265/17/A-0 ROBBERY, ARMED c265 §17 (Felony)
Indicted Charge
Amended Charge

Charge Disposition

Disposition Date 11/29/2001

Disposition Guilty

Load Party Charges 6 through 7 Load All 7 Party Charges

Events

Date	Session	Location	Type	Event Judge	Result
03/09/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Arraignment		Rescheduled
03/22/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Arraignment		Held as Scheduled
04/12/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Pre-Trial Conference		Held as Scheduled
05/14/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Hearing		Rescheduled
05/29/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Pre-Trial Conference		Rescheduled
06/05/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Pre-Trial Conference		Rescheduled
06/06/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Pre-Trial Conference		Held as Scheduled
06/13/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Hearing		Rescheduled
07/09/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Hearing		Held as Scheduled
09/04/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Evidentiary Hearing		Canceled
09/10/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Status Review		Rescheduled
10/09/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Jury Trial		Canceled
10/09/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Hearing		Rescheduled
10/10/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Hearing		Rescheduled
10/11/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Hearing		Held as Scheduled
10/17/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Hearing		Held as Scheduled
10/22/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Status Review		Rescheduled
10/24/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Status Review		Canceled
11/14/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Jury Trial		Rescheduled
11/15/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Jury Trial		Rescheduled
11/16/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Jury Trial		Rescheduled

11/19/2001 09:00 AM	Criminal 1 - Ct. Rm. 1	Jury Trial	Not Held
11/19/2001 09:00 AM	Criminal 1 - Ct. Rm. 1	Hearing	Held as Scheduled
11/20/2001 09:00 AM	Criminal 1 - Ct. Rm. 1	Jury Trial	Held as Scheduled
11/21/2001 09:00 AM	Criminal 1 - Ct. Rm. 1	Jury Trial	Held as Scheduled
11/26/2001 09:00 AM	Criminal 1 - Ct. Rm. 1	Jury Trial	Held as Scheduled
11/27/2001 09:00 AM	Criminal 1 - Ct. Rm. 1	Jury Trial	Held as Scheduled
11/28/2001 09:00 AM	Criminal 1 - Ct. Rm. 1	Jury Trial	Held as Scheduled
11/29/2001 09:00 AM	Criminal 1 - Ct. Rm. 1	Jury Trial	Held as Scheduled
12/04/2001 09:00 AM	Criminal 1 - Ct. Rm. 1	Hearing on Competency	Held as Scheduled
12/20/2001 09:00 AM	Criminal 1 - Ct. Rm. 1	Hearing	Held as Scheduled
01/04/2002 09:00 AM	Criminal 1 - Ct. Rm. 1	Hearing for Sentence Imposition	Not Held
01/04/2002 09:00 AM	Criminal 1 - Ct. Rm. 1	Hearing	Held as Scheduled

Ticklers

Tickler	Start Date	Days Due	Due Date	Completed Date
Conversion Attorney Mismatch	02/16/2001	1	06/13/2015	

Docket Information

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
02/16/2001	Indictment returned	1	
02/23/2001	Habed for arraignment on 3/9/01		
03/12/2001	Arraignment cont.'d to 3/22/01 (Wernick, J.)		
03/12/2001	Habed for arraignment issued ret 3/22/01		
03/21/2001	Deft arraigned before Court		
03/21/2001	Appointment of Counsel Edward B Fogarty Rule 53.		
03/21/2001	NAC.	2	
03/21/2001	Deft waives reading of indictment		
03/21/2001	Plea of not guilty		
03/21/2001	Bail set: \$500,000.00 Cash/surety w/o prej. to cover these indictments and Counts 1-6 on 00-154. (Wernick, J)		
03/21/2001	Bail: mittimus issued	3	
03/21/2001	Bail warning read		
04/12/2001	Pre-trial conference report filed. Motion hearing 5/14/01, Check trial status 9/10/01, Trial 10/9/01 (Velis, J.)	4	
05/16/2001	Appointment of Counsel Andrew Klyman		
05/16/2001	Appearance of Deft's Atty: Andrew Klyman	5	
05/16/2001	Motion by Deft: to withdraw with affadavit & request for impoundment.	6	
05/16/2001	Deft files Affidavit in support motion to withdraw	6.1	
05/16/2001	Motion (P#6) allowed (Daniel A. Ford, Justice)		
05/16/2001	Dis- appearance filed by Edward B Fogarty	7	
06/06/2001	Pre-trial conference report filed	8	

07/02/2001	Motion by Deft: for funds for independent psychological evaluation ex parte	9
07/02/2001	Affidavit of Attorney Andrew M. Klyman	9.1
07/03/2001	Motion (P#9) After hearing, allowed in an amount not to exceed \$3500.00 (Rup, J.)	
07/06/2001	Motion by Deft: for bill of particulars	10
07/06/2001	Motion by Deft: to compel commonwealth to identify expert witness(es)	11
07/06/2001	Motion by Deft: for exculpatory evidence - rewards and promises	12
07/06/2001	Motion by Deft: for discovery of physical and expert evidence	13
07/06/2001	Motion by Deft: for copies of photographs	14
07/06/2001	Motion by Deft: to inspect statements of witnesses	15
07/06/2001	Motion by Deft: for discovery of statements of defendant	16
07/06/2001	Motion by Deft: for statements of co-defendant(s)	17
07/06/2001	Motion by Deft: for exculpatory evidence	18
07/09/2001	Motion (P#12, 13, 14, 16, 17, 18) allowed (Judd J. Carhart, Justice)	
07/09/2001	Motion (P#10, 11, 15,) see record and argumnt of counsel (Judd J. Carhart, Justice)	
07/09/2001	Both parties filed agreement on discovery motions	19
09/26/2001	Motion by Deft: to suppress statements	20
09/26/2001	Deft files affidavit in support of motion to suppress statements	20.1
09/26/2001	Deft files memorandum in support of motion to suppress statements	21
10/11/2001	Motion (P#20) denied (Velis,J.) N. 10/12/01	
10/11/2001	ORDERED remanded to the custody of the Hampshire House of Correction (Northampton)	22
10/11/2001	Exhibits RE: Evidentiary Hearing	23
10/17/2001	Motion by Deft: for additional funds for assistance of expert	24
10/17/2001	Affidavit	24.1
10/17/2001	Motion by Deft: for production of transcript of suppression hearing	25
10/17/2001	Affidavit in support of motion for transcript	25.1
10/17/2001	Motion (P#25 & 26) allowed (Francis R. Fecteau, Justice)	
10/19/2001	Motion by Deft: to continue trial date	26
10/19/2001	Affidavit of Andrew Klyman	26.1
10/24/2001	Motion (P#26) no action taken at this time (Francis R. Fecteau, Justice)	
11/06/2001	Motion by Deft: for indigent summons	27
11/06/2001	Motion (P#27) allowed (Curley, J.)	
11/07/2001	Summons issued re; 27.1a Claritza Santini, 27.1b Nancy Garcia	27.1
11/13/2001	Summons returned: 27.1a) Claritza Santini, b) Nancy Garcia	
11/16/2001	Motion by Commonwealth: bill of particulars	28
11/16/2001	Order (Page, J.)	29
11/19/2001	Motion by Deft: for indigent summons purs. to Mass R. Crim. P.17(b)	30
11/19/2001	Motion (P#30) allowed (McDonald, J.)	
11/19/2001	Motion by Deft: proposed individual voire dire questions	31
11/19/2001	Motion by Deft: proposed voire dire questions	32
11/19/2001	Motion by Deft: for relief from prejudicial joinder of separate charges	33

11/19/2001	Deft files Affidavit in support of motion for relief from prejudicial joinder of offenses.	33.1
11/19/2001	Deft files List of witnesses	34
11/19/2001	Motion by Deft: for sequestration of witnesses	35
11/19/2001	Motion by Commonwealth: for a view	36
11/19/2001	Commonwealth files list of witnesses	37
11/19/2001	Motion by Commonwealth: for joinder of indictments pursuant to Mass. R.Crim.P.9(a)(3) and opposition to defendants motion for severance pursuant to Mass R. CrimPI9(4)(d).	38
11/19/2001	Commonwealth's memo of law in opposition to defendant's motion to sever indictments for trial.	39
11/19/2001	Motion (P#35) allowed (McDonald, J.).	
11/20/2001	Jury selection begins (McDonald, J.) (as to all offenses)	
11/20/2001	Motion (P#33) denied (McDonald, J.)	
11/20/2001	Motion (P#38) allowed (McDonald, J.)	
11/21/2001	Hospital records from Baystate Medical Center received	
11/21/2001	Jury trial begins with counts 2 thru 7 also 01-154, counts 1-6 (McDonald, J.)	
11/27/2001	Commonwealth's request for Jury Instructions	40
11/27/2001	Motion by Deft: for required finding of not guilty	41
11/27/2001	Hearing on (P#41) motion for required finding of not guilty held, matter taken under advisement at the close of Commonwealth's evidence (McDonald, J.)	
11/28/2001	Summons returned	
11/28/2001	Motion (P#41) denied (McDonald, J.)	
11/28/2001	Motion by Commonwealth: in limine to preclude certain testimony of defense witness	42
11/28/2001	Motion (P#42) allowed as to (please see pleading) (McDonald, J.)	
11/28/2001	Commonwealth's supplemental request for Jury Instructions	43
11/28/2001	Defendant's amended request for jury instructions	44
11/29/2001	RE Offense 1:Guilty verdict (McDonald, J.)	45
11/29/2001	RE Offense 2:Guilty verdict	
11/29/2001	RE Offense 3:Guilty verdict	
11/29/2001	RE Offense 4:Guilty verdict	
11/29/2001	RE Offense 5:Guilty verdict	
11/29/2001	RE Offense 6:Guilty verdict	
11/29/2001	RE Offense 7:Guilty verdict	
11/29/2001	List of jurors filed. (as to all offenses)	46
11/29/2001	Re: Exhibits filed Evidentiary hearing	47
11/29/2001	Re: Exhibits Trial by Jury	48
11/29/2001	Oral Motion for for required finding of not guilty at the close of all the evidence is--Denied. Per order of (McDonald, J.) the medical records of victim may be returned to the Commonwealth.	
11/30/2001	ORDER: Deft to be examined for competency (McDonald, J.)	49
11/30/2001	ORDER: of Commitment for Observation (15(e), 123) (McDonald, J.)	50
12/18/2001	Evaluation report filed by Michael Sherry, Ph.D	51
12/20/2001	Motion by Deft: for funds for assistance of expert	52
12/20/2001	Affidavit of Andrew M. Klyman, Esquire	52.1

12/20/2001	Motion (P#51) allowed (McDonald, J.)	
01/02/2002	Transcript of testimony received volumes # 1, 10/09/01 from court reporter, Trudeau, Roger	
01/04/2002	Defendant sentenced on 01-120-1 to MCI Cedar Junction for not more than 7 1/2 years and not less than 5 years - recommendation that first 5 years be served at Hampshire County House of Corrections (McDonald, J.)	53
01/04/2002	Sentence credit given as per 279:33A: 339 days by agreement	
01/04/2002	Commonwealth waives victim witness assessment	
01/04/2002	Defendant warned per Chapter 22E Sec. 3 of DNA	54
01/04/2002	RE Offense 01-120-2:Dismissed- Verdict Vacated	
01/04/2002	Defendant sentenced on 01-120-3 to MCI Cedar Junction for not more than 5 years and 1 day and not less than 5 years - consecutive to 01-120-1 (see pldg. #2 on 01-120-3) (McDonald, J.)	
01/04/2002	RE Offense 01-120-4:Dismissed - Verdict Vacated	
01/04/2002	Defendant sentenced on 01-120-5 to probation for 10 years - consecutive to 01-154-4 (McDonald, J.)	
01/04/2002	Probation supervision fee assessed: \$50.00 per month or 1 day community service at discretion of probation department	
01/04/2002	Defendant is subject to the following special conditions: (see pldg. #2 on 01-120-5)	
01/04/2002	RE Offense 01-120-6:Dismissed - Verdict Vacated	
01/04/2002	Defendant sentenced on 01-120-7 to Hampden County House of Corrections for 2 1/2 years - concurrent with 01-120-3 (see pldg. #2 on 01-120-7) (McDonald, J.)	
01/04/2002	Notice of appeal from sentence to Cedar Junction MCI (Walpole) filed by Fernando Perez N. 1/29/2002	55
01/04/2002	NOTICE of APPEAL FILED by Fernando Perez N. 1/16/02	56
01/22/2002	Court Reporter Trudeau, Roger is hereby notified to prepare one copy of the transcript of the evidence of October 09, 2001.	57
01/22/2002	Court Reporter Costa, Lois is hereby notified to prepare one copy of the transcript of the evidence of October 10,11, 2001 before Judge Velis. November 19,20,21,26,27,28,29 2001 before Judge McDonald. & January 4, 2002 before Judge McDonald.	58
01/22/2002	Court Reporter Donnellan, Judith L is hereby notified to prepare one copy of the transcript of the evidence of December 04, 2001.	59
01/22/2002	Appearance of Deft's Atty: James A Hammerschmith	60
02/15/2002	Motion by Deft: to revise or revoke sentence (as to offenses #1 thru #7)	61
02/15/2002	Affidavit in support of motion to revise and revoke (as to offense #1 thru #7)	61.1
02/19/2002	Notice sent on February 19, 2002 to (A.D.A, E. Farris only) no action at this time.	
04/22/2002	Transcript of testimony received volumes # 2, 10/10/01 from court reporter, Costa, Lois	
04/22/2002	Transcript of testimony received volumes # 3, 10/11/01 from court reporter, Costa, Lois	
04/22/2002	Transcript of testimony received volumes # 3, 11/26/01 from court reporter, Costa, Lois	
04/22/2002	Transcript of testimony received volumes # 5 from court reporter, Costa, Lois	
04/22/2002	Transcript of testimony received volumes # 1, 01/04/02 from court reporter, Costa, Lois	
04/26/2002	Transcript of testimony received volumes # 1, 11/19/01 from court reporter, Costa, Lois	

04/26/2002	Transcript of testimony received volumes # 1, 11/20/01 from court reporter, Costa, Lois	
04/29/2002	Transcript of testimony received volumes # 2, 11/21/01 from court reporter, Costa, Lois	
05/28/2002	Transcript of testimony received volumes # 4, 11/27/01 from court reporter, Costa, Lois	
05/30/2002	Transcript of testimony received volumes # 6, 11/29/01 from court reporter, Costa, Lois	
08/05/2002	Appearance of Deft's Atty: Christopher R Goddu	62
09/13/2002	(5/28/2002, At Norfolk - Appellate Division) After hearing , Judgement imposing said sentence stand and that said appeal be and is hereby dismissed (Donohue & Quinlan, JJ.) (Counts 1 and 3 only)	63
04/10/2003	Motion by Deft: to compel transcription. N.4/14/03	64
04/14/2003	Motion (P#64) allowed (Ford, J.)	
04/16/2003	Transcript of testimony received volumes # 1, 12/4/01 from court reporter, Donnellan, Judith L	
04/29/2003	Notice of assembly of record; mailed to Appeals Court per Rule 9(d)	65
05/07/2003	Notice of Entry of appeal received from the Appeals Court	66
01/03/2005	Rescript received from Appeals Court; judgments AFFIRMED	67
03/28/2005	Appearance of Deft's Atty: William A Korman	68
12/21/2005	Appearance of Commonwealth's Atty: Thomas H Townsend	69
12/27/2005	Motion by Deft: for new trial	70
12/27/2005	Deft files: Memorandum of law in support of motion for new trial; prior proceedings	71
12/27/2005	Motion by Deft: for an evidentiary hearing on defendant's motion for new trial	72
12/27/2005	Notice sent to The Honorable C. Brian McDonald regarding; Motion by deft. for new trial; Memorandum and Motion for an evidentiary hearing on deft's motion for new trial—Have the Commonwealth respond to the Motion on or before January 27, 2006 (McDonald, J.) N.	
12/27/2005	Notice sent to The Honorable C. Brian McDonald regarding Defendant's Motion to revise or revoke sentences (dated February 15, 2002)	
01/03/2006	Motion (P#61) denied (McDonald, J.). Copies mailed 1/3/06	
01/26/2006	Commonwealth files: Opposition to the defendant's motion for a new trial based on newly discovered evidence	73
01/26/2006	Notice sent on 1/26/2006 to The Honorable C. Brian McDonald	
01/27/2006	Motion (P#70) Denied; See Order this date (McDonald, J.). Copies mailed	
01/27/2006	Order (McDonald, J.) N.	74
02/03/2006	NOTICE of APPEAL FILED by Fernando Perez. N.2/6/06	75
02/06/2006	Notice of assembly of record; mailed to Appeals Court per Rule 9(d)	76
02/09/2006	Notice of Entry of appeal received from the Appeals Court	77
12/26/2006	Rescript received from Appeals Court; judgment AFFIRMED Order denying motion for new trial affirmed	78
03/07/2016	Appearance entered On this date William Korman, Esq. dismissed/withdrawn as Private Counsel for Defendant Fernando R Perez	
03/07/2016	Appearance entered On this date Elizabeth Caddick, Esq. added as Appointed - Appellate Action for Defendant Fernando R Perez	79
03/07/2016	Defendant 's Motion for relief pursuant to Mass. R. Crim P. 30(a) n. McDonough, J. RAJ 3/10/16	80
03/10/2016	Fernando R Perez's Memorandum in support of	81

motion for relief pursuant to Mass. R. Crim. P 30(a)

09/07/2016	Endorsement on Motion for relief pursuant to Mass. R. Crim P. 30(a), (#80.0): Other action taken See endorsment on pleading #26 in case # 01-154 (Note: this endorsment is written on pl.#81 in case 01-120) N. 9/7/16 ADA Farris & Atty: Caddick		
10/07/2016	Commonwealth 's Motion to extend time for filing response to defendant's (second) motion for post-conviction relief pursuant to Mass.R.Crim.P.30	82	
10/07/2016	Endorsement on Motion to extend time for filing response to defendant's (second) motion for post-conviction relief pursuant to MASS.R. CRIM.P.30, (#82.0): ALLOWED		
10/18/2016	Commonwealth 's Motion of opposition to defendant's (second) motion for post-conviction relief pursuant to Mass.R.Crim.P.30	83	
10/26/2016	Endorsement on Motion for Relief Pursuant to Mass. R. Crim. P. 30(a), (#80.0): DENIED I conclude that a sentence providing for parole eligibility after 27.5 years is not the functional equivalent of a life sentence without parole, and therefore that the sentence imposed in this case was not constitutionally infirm. See Commonwealth v. Costa, 472 Mass. 139, 146 (2015). The sentence is a far cry from those out-of-state sentences noted in Commonwealth v. Brown, 466 Mass. 676, 691 n. 11 (2013) (e.g. sentences providing for parole eligibility after 60 years and 75 years). Because the sentence does not violate the state or federal constitution, there is no basis under Mass. R. Crim. P. 30(a) to vacate it. Moreover, I was the trial judge in the case of the co-defendant, and because I am familiar with the facts of the case, I conclude that the carefully crafted sentence of Judge MacDonald does not shock the conscience or offend fundamental notions or human dignity. For these reasons, as well as for those set forth in the Commonwealth's opposition, this motion is Denied without a hearing.		Image
10/26/2016	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Elizabeth Caddick, Esq. Attorney: Elizabeth Dunphy Farris, Esq.		
11/10/2016	Defendant 's Motion for reconsideration denial of motion for relief pursuant to Mass. R. Crim P 30(a) n. Ford, J 11/14/16	84	
11/14/2016	Endorsement on Motion for reconsideration of denial of motion for relief pursuant to Mass. R. Crim. P. 30(a), (#84.0): DENIED		Image
11/21/2016	Notice of appeal filed. Applies To: Perez, Fernando R (Defendant)	85	
11/29/2016	Attorney appearance On this date Thomas H. Townsend, Esq. dismissed/withdrawn as Attorney for the Commonwealth for Prosecutor Commonwealth		
11/29/2016	Attorney appearance On this date Katherine E McMahon, Esq. added as Attorney for the Commonwealth for Prosecutor Commonwealth		
11/30/2016	Appeal: notice of assembly of record sent to Counsel Applies To: Perez, Fernando R (Defendant)	86	
11/30/2016	Appeal: Statement of the Case on Appeal (Cover Sheet). Applies To: Perez, Fernando R (Defendant)	87	
12/07/2016	Notice of Entry of appeal received from the Appeals Court	88	Image

Case Disposition

Disposition	Date	Case Judge
Disposed	12/26/2006	

0179CR00154 Commonwealth vs. Perez, Fernando R

Case Type Indictment
Case Status Open
File Date 03/02/2001
DCM Track: I - Inventory

Initiating Action: ASSAULT TO MURDER, ARMED c265
Status Date: §18(b) 01/03/2005
Case Judge:
Next Event:

[All Information](#) [Party](#) [Charge](#) [Event](#) [Tickler](#) [Docket](#) [Disposition](#)

Party Information**Commonwealth - Prosecutor****Alias****Party Attorney**

Attorney	Farris, Esq., Elizabeth Dunphy
Bar Code	545992
Address	Hampden County District Attorney Third Floor Springfield, MA 01103 (413)505-5926
Phone Number	
Attorney	McMahon, Esq., Katherine E
Bar Code	338410
Address	Office of the District Attorney Hall of Justice 50 State Street Springfield, MA 01102 (413)505-5905
Phone Number	

[More Party Information](#)

Perez, Fernando R - Defendant**Alias****Party Attorney**

Attorney	Caddick, Esq., Elizabeth
Bar Code	642016
Address	3 Bessom Street #155 Marblehead, MA 01945 (781)631-1003
Phone Number	

[More Party Information](#)

Party Charge Information**Perez, Fernando R - Defendant**

Charge # 1 : 265/18/C-0 - Felony ASSAULT TO MURDER, ARMED c265 §18(b)

Original Charge 265/18/C-0 ASSAULT TO MURDER, ARMED c265
§18(b) (Felony)

Indicted Charge
Amended Charge

Charge Disposition	
Disposition Date	11/29/2001
Disposition	Not Guilty

Perez, Fernando R - Defendant

Charge # 2 : 265/18/F-0 - Felony ASSAULT TO ROB, ARMED c265 §18(b)

Original Charge 265/18/F-0 ASSAULT TO ROB, ARMED c265 §18(b)
(Felony)

Indicted Charge
Amended Charge

Charge Disposition	
Disposition Date	11/29/2001
Disposition	Guilty

Perez, Fernando R - Defendant

Charge # 3 : 265/18B/A-3 - FIREARM IN FELONY, POSSESS c265 §18B

Original Charge 265/18B/A-3 FIREARM IN FELONY, POSSESS c265 §18B

Indicted Charge
Amended Charge

Charge Disposition
Disposition Date 01/04/2002
Disposition Dismissed

Perez, Fernando R - Defendant

Charge # 4 : 265/15A/B-1 - Felony A&B WITH DANGEROUS WEAPON +60 c265 §15A(a)

Original Charge 265/15A/B-1 A&B WITH DANGEROUS WEAPON +60 c265 §15A(a) (Felony)

Indicted Charge
Amended Charge

Charge Disposition
Disposition Date 11/29/2001
Disposition Guilty

Perez, Fernando R - Defendant

Charge # 5 : 269/10/A-0 - Misdemeanor - more than 100 days incarceration DANGEROUS WEAPON ON SCHOOL
GROUNDS,CARRY c269 §10(j)

Original Charge 269/10/A-0 DANGEROUS WEAPON ON SCHOOL GROUNDS,CARRY c269 §10(j) (Misdemeanor - more than 100 days incarceration)

Indicted Charge
Amended Charge

Charge Disposition
Disposition Date 11/29/2001
Disposition Guilty

Load Party Charges 6 through 6 Load All 6 Party Charges

Events

Date	Session	Location	Type	Event Judge	Result
03/22/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Arraignment		Held as Scheduled
04/12/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Pre-Trial Conference		Held as Scheduled
05/14/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Hearing		Canceled
05/29/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Pre-Trial Conference		Rescheduled
06/05/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Pre-Trial Conference		Rescheduled
06/06/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Pre-Trial Conference		Held as Scheduled
07/09/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Hearing		Canceled
09/10/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Status Review		Rescheduled
10/09/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Jury Trial		Rescheduled
10/09/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Hearing		Held as Scheduled
10/09/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Evidentiary Hearing		Rescheduled
10/10/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Hearing		Held as Scheduled
10/11/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Hearing		Held as Scheduled
10/22/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Status Review		Rescheduled
10/24/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Status Review		Canceled
11/14/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Jury Trial		Rescheduled
11/15/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Jury Trial		Rescheduled
11/16/2001 09:00 AM	Criminal 1 - Ct. Rm. 1		Jury Trial		Rescheduled

11/19/2001 09:00 AM	Criminal 1 - Ct. Rm. 1	Jury Trial	Not Held
11/19/2001 09:00 AM	CR session 3 - Ct. Rm.7	Hearing	Held as Scheduled
11/20/2001 09:00 AM	CR session 3 - Ct. Rm.7	Jury Trial	Held as Scheduled
11/21/2001 09:00 AM	CR session 3 - Ct. Rm.7	Jury Trial	Held as Scheduled
11/26/2001 09:00 AM	CR session 3 - Ct. Rm.7	Jury Trial	Held as Scheduled
11/27/2001 09:00 AM	CR session 3 - Ct. Rm.7	Jury Trial	Held as Scheduled
11/28/2001 09:00 AM	CR session 3 - Ct. Rm.7	Jury Trial	Held as Scheduled
11/29/2001 09:00 AM	CR session 3 - Ct. Rm.7	Jury Trial	Held as Scheduled
01/04/2002 09:00 AM	CR session 3 - Ct. Rm.7	Hearing for Sentence Imposition	Held as Scheduled

Ticklers

Tickler	Start Date	Days Due	Due Date	Completed Date
Conversion Attorney Mismatch	03/02/2001	1	06/13/2015	

Docket Information

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
03/02/2001	Indictment returned	1	
03/14/2001	Habed for arraignment on 3/22/01		
03/21/2001	Deft arraigned before Court		
03/21/2001	Appointment of Counsel Edward B Fogarty Rule 53.		
03/21/2001	NAC.	2	
03/21/2001	Deft waives reading of indictment		
03/21/2001	Plea of not guilty		
03/21/2001	Bail set:set on 01-120 counts 1-7 in amount of \$500,000. c/s w/o prej. to be consolidated w/these indictments for purposes of bail. (Wernick, J)		
03/21/2001	Bail: mittimus issued	3	
03/21/2001	PTC 4/12/01.		
04/12/2001	Pre-trial conference report filed. Motion hearing 5/14/01, Check trial status 9/10/01, Trial 10/9/01 (See pleading #4 in 01-120) (Velis, J.)		
05/16/2001	Appointment of Counsel Andrew Klyman CPCS		
05/16/2001	Appearance of Deft's Atty: Andrew Klyman	4	
05/16/2001	Motion by Deft: to withdraw with affidavit & request for impoundment (see pleading #6, on 01-120)		
05/16/2001	Deft files Affidavit in support motion to withdraw(see pleading #6.1 on 01-120)		
05/16/2001	Motion (P#6, on 01-120) allowed (Daniel A. Ford, Justice)		
05/16/2001	Withdrawal of appearance filed by Edward B Fogarty(see pleading #7, on #01-120)		
11/16/2001	Motion by Commonwealth: bill of particulars	5	
11/19/2001	Deft files proposed individual voire dire questions	6	
11/19/2001	Deft files proposed voire dire questions	7	

11/19/2001	Motion by Deft: for relief from prejudicial joinder of separate charges	8
11/19/2001	Deft files affidavit in support of motion for relief from prejudicial joinder of offenses	8.1
11/19/2001	Deft files list of witnesses	9
11/19/2001	Motion by Deft: for sequestration of witnesses	10
11/19/2001	Motion (P#10) allowed (McDonald, J.)	
11/19/2001	Motion by Commonwealth: for a view	11
11/19/2001	Motion (P#11) denied (McDonald, J.)	
11/19/2001	Commonwealth files list of witnesses	12
11/19/2001	Motion by Commonwealth: for joinder of indictments - Opposition to defendant's motion for severance	13
11/19/2001	Motion (P#13) allowed (McDonald, J.)	
11/19/2001	Commonwealth files memorandum of law in opposition to defendant's motion to sever indictments for trial	14
11/20/2001	Motion (P#8) denied (McDonald, J.)	
11/26/2001	Deft files request for jury instructions	15
11/27/2001	Commonwealth files requests for jury instructions	16
11/27/2001	Motion by Deft: for required finding of not guilty	17
11/28/2001	Motion (P#17) denied (McDonald, J.)	
11/28/2001	Motion by Commonwealth: in limine to preclude certain testimony of defense witness	18
11/28/2001	Motion (P#18) allowed (see pldg.) (McDonald, J.)	
11/28/2001	Commonwealth files supplemental requests for jury instructions	19
11/28/2001	Deft files amended request for jury instructions	20
11/29/2001	Oral renewed motion for required finding of not guilty at the close of all evidence - denied (McDonald, J.)	
11/29/2001	Verdict	21
11/29/2001	RE Offense 1:Not guilty verdict	
11/29/2001	RE Offense 2:Guilty verdict	
11/29/2001	RE Offense 3:Guilty verdict	
11/29/2001	RE Offense 4:Guilty verdict	
11/29/2001	RE Offense 5:Guilty verdict	
11/29/2001	RE Offense 6:Guilty verdict	
11/29/2001	List of jurors filed.	22
11/29/2001	Defendant held without the right to bail at the Hampshire County House of Corrections - bail: mittimus issued (see pldg.#2 on 01-154-2)	
11/30/2001	Motion by Deft: for immediate 15A evaluation (see pldg. #3 on 01-154-2)	
11/30/2001	Motion (P#3) allowed as an aid in sentencing (see pldg. #3 on 01-154-2) (McDonald, J.)	
01/04/2002	Defendant sentenced on 01-154-2 to MCI Cedar Junction for not more than 10 years and not less than 7 1/2 years - consecutive to 01-120-3 (see pldg. #4 on 01-154-2) (McDonald, J.)	
01/04/2002	RE Offense 01-154-3:Dismissed - verdict vacated	
01/04/2002	Defendant sentenced on 01-154-4 to MCI Cedar Junction for not more than 10 years and not less than 9 years and 364 days - consecutive to 01-154-2 (see pldg. #2 on 01-154-4) (McDonald, J.)	
01/04/2002	Defendant sentenced on 01-154-5 to Hampden County House of Corrections for 2 1/2 years - concurrent with 01-120-7 (see pldg. #2	

on 01-154-5) (McDonald, J.)

01/04/2002 Defendant sentenced on 01-154-6 to Hampden County House of Corrections for 1 day - concurrent with 01-154-5 (see pldg. #2 on 01-154-6) (McDonald, J.)

01/04/2002 Notice of appeal from sentence to Cedar Junction MCI (Walpole) filed by Fernando Perez. (see plg. #5, 01-154-2) N. 1/29/2002

01/04/2002 NOTICE of APPEAL FILED by Fernando Perez. (see pldg. #6, 01-154-2) N.1/17/02

01/22/2002 Court Reporter Costa, Lois is hereby notified to prepare one copy of the transcript of the evidence of November 19, 20, 21, 26, 27, 28, 29, 30, 2001 and January 4, 2002. (see pleading #7, 01-154-2)

01/22/2002 Appearance of Deft's Atty: James A Hammerschmith 23

02/15/2002 Motion by Deft: to revise or revoke sentences (as to offenses #2 thru #6) (see pleading #8, on offense #2)

02/15/2002 Affidavit in support of motion to revise and revoke (as to offenses #2 thru #6) (see pleading #8.1, on offense #2)

02/19/2002 Notice sent on February 19, 2002 to (A.D.A. E. Dunphy-Farris only,)

08/05/2002 Appearance of Deft's Atty: Christopher R Goddu. See original in case no. 01-120

09/13/2002 (5/28/2002, At Norfolk - Appellate Division) After hearing , Judgement imposing said sentence stand and that said appeal be and is hereby dismissed (Donohue & Quinlan, JJ.) (Counts 2 and 4 only) See pl. #9, in 01-154-2)

04/10/2003 Motion by Deft: to compel transcription. (see original in case no. 01-120, pleading no. 64)

04/29/2003 Notice of assembly of record; mailed to Appeals Court per Rule 9(d) See pleading no. 10, on 01-154-2

05/07/2003 Notice of Entry of appeal received from the Appeals Court. See pleading no. 11, on 01-154-2.

01/03/2005 Rescript received from Appeals Court; judgments AFFIRMED. (see pleading 12 in 01-154-2)

03/07/2016 Appearance entered
On this date Christopher R. Goddu, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Fernando R Perez

03/07/2016 Appearance entered
On this date Elizabeth Caddick, Esq. added as Appointed - Appellate Action for Defendant Fernando R Perez 24

03/07/2016 Defendant 's Motion for relief pursuant to Mass. R. Crim. P. 30(a) n. McDonough, J., RAJ 25

03/07/2016 Fernando R Perez's Memorandum in support of motion for relief pursuant to Mass. R. Crim. P 30(a) 26

09/07/2016 Endorsement on Motion for relief pursuant to Mass. R. Crim P. 30(a) & aff., (#25.0): Other action taken This motion was inexplicably not brought to my attention until today, and I apologize to counsel form the long delay. the Commonwealth may have 30 days from the date hereof in which to file a written response to this motion. (Note: This endorsment is written on pl.#26 in case #01-154) N.9/7/16 ADA Farris & Atty: Caddick

10/07/2016 Commonwealth 's Motion to extend time for filing response to defendant's (second) motion for post-conviction relief pursuant to Mass.R.Crim.P. 30 27

10/07/2016 Endorsement on Motion to extend time for filing response to defendant's (second) motion for post-conviction relief pursuant to MASS.R.CRIM.P.30, (#27.0): ALLOWED

10/18/2016 Commonwealth 's Motion of opposition to defendant's (second) motion for post-conviction relief pursuant to Mass.R.Crim.P. 30 28

10/26/2016 Endorsement on Motion for Relief Pursuant to Mass. R. Crim. P. 30(a), (#25.0): DENIED
Denied without a hearing. See endorsement on identical motion filed in Docket No. 2001-120. Image

10/26/2016 The following form was generated:
A Clerk's Notice was generated and sent to:
Attorney: Elizabeth Caddick, Esq.
Attorney: Elizabeth Dunphy Farris, Esq.

11/10/2016	Defendant's Motion for reconsideration of denial of motion for relief pursuant to Mass. R. Crim. P. 30(a) n. Ford, J. 11/4/16	29	
11/15/2016	Endorsement on Motion for reconsideration of denial of motion for relief pursuant to Mass. R. Crim. P. 30(a), (#29.0): DENIED		Image
11/21/2016	Notice of appeal filed.RE: Denial of his motion for relief pursuant to Mass .R. Crim. P. 30(a) Applies To: Perez, Fernando R (Defendant)	30	
11/29/2016	Attorney appearance On this date Katherine E McMahon, Esq. added as Attorney for the Commonwealth for Prosecutor Commonwealth		
11/30/2016	Appeal: notice of assembly of record sent to Counsel Applies To: Perez, Fernando R (Defendant)	31	
11/30/2016	Appeal: Statement of the Case on Appeal (Cover Sheet). Applies To: Perez, Fernando R (Defendant)	32	
12/07/2016	Notice of Entry of appeal received from the Appeals Court	33	Image

Case Disposition

Disposition	Date	Case Judge
Disposed	01/03/2005	

Supreme Judicial Court and Appeals Court of Massachusetts



Public Case Information

Case Search
Involved Party
Lower Court Docket
Case Number
Case Name
Case Description
Case Status
Case Nature
Case Sub-Nature
Appellant
Brief Status
Panel
Citation
Lower Court
Lower Ct Judge
Case Date

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APPEALS COURT Full Court Panel Case Case Docket

COMMONWEALTH vs. FERNANDO R. PEREZ
2016-P-1625

CASE HEADER

Case Status	No briefs yet	Status Date	12/02/2016
Nature	Crime against person - no death	Entry Date	12/02/2016
Sub-Nature	Armed assault with intent to rob	SJ Number	
Appellant	Defendant	Case Type	Criminal
Brief Status	Awaiting blue brief	Brief Due	01/11/2017
Panel		Argued/Submitted	
Citation		Decision Date	
Lower Court	Hampden Superior Court	TC Number	
Lower Ct Judge	C. Brian McDonald, J.	TC Entry Date	03/02/2001
FAR Number		SJC Number	

INVOLVED PARTY

Commonwealth
Plaintiff/Appellee
Awaiting red brief

Fernando R. Perez
Defendant/Appellant
Awaiting blue brief

ATTORNEY APPEARANCE

Katherine E. McMahon, A.D.A.

Elizabeth Caddick, Esquire

DOCKET ENTRIES

Entry Date	Paper	Entry Text
12/02/2016		Transcripts received: NONE
12/02/2016	#1	Lower Court Assembly of the Record Package
12/02/2016	#2	Notice of entry sent.
12/07/2016	#3	Docketing Statement received from Fernando R. Perez.

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As of 12/07/2016 20:01

Supreme Judicial Court and Appeals Court of Massachusetts



Public Case Information

Case Search

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Involved Party

APPEALS COURT Full Court Panel Case Case Docket

Product Number

COMMONWEALTH vs. FERNANDO R. PEREZ
2016-P-1624

Primary Appellate Judge

Entry Date

Entry Court Judge

CASE HEADER

Court Clerk Office

Case Status	No briefs yet	Status Date	12/02/2016
Nature	Crime against Property	Entry Date	12/02/2016
Sub-Nature	Armed Robbery, Unlawful Possessi	SJ Number	
Appellant	Defendant	Case Type	Criminal
Brief Status	Awaiting blue brief	Brief Due	01/11/2017
Panel		Argued/Submitted	
Citation		Decision Date	
Lower Court	Hampden Superior Court	TC Number	
Lower Ct Judge	C. Brian McDonald, J.	TC Entry Date	02/16/2001
FAR Number		SJC Number	

Full Court Case

Full Court Judge

Full Court Judge

Full Court Judge

Decision Number

Case Date

Case Date

Case Link

INVOLVED PARTY

ATTORNEY APPEARANCE

Commonwealth
Plaintiff/Appellee
Awaiting red brief

Katherine E. McMahon, A.D.A.

Fernando R. Perez
Defendant/Appellant
Awaiting blue brief


Elizabeth Caddick, Esquire


DOCKET ENTRIES

Entry Date	Paper	Entry Text
12/02/2016		Transcripts received: NONE
12/02/2016	#1	Lower Court Assembly of the Record Package
12/02/2016	#2	Notice of entry sent.
12/07/2016	#3	Docketing Statement received from Fernando R. Perez

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As of 12/08/2016 20:01

CLERK'S NOTICE	DOCKET NUMBER 0179CR00120	Trial Court of Massachusetts The Superior Court 
CASE NAME: Commonwealth vs. Fernando R Perez		Laura S Gentile, Clerk of Courts
TO: Elizabeth Caddick, Esq. 3 Bessom Street #155 Marblehead, MA 01945		COURT NAME & ADDRESS Hampden County Superior Court Hall of Justice - 50 State Street P.O. Box 559 Springfield, MA 01102
<p style="text-align: center;">You are hereby notified that on 10/26/2016 the following entry was made on the above referenced docket:</p> <p>Endorsement on Motion for Relief Pursuant to Mass. R. Crim. P. 30(a), (#80.0): DENIED I conclude that a sentence providing for parole eligibility after 27.5 years is not the functional equivalent of a life sentence without parole, and therefore that the sentence imposed in this case was not constitutionally infirm. See Commonwealth v. Costa, 472 Mass. 139, 146 (2015). The sentence is a far cry from those out-of-state sentences noted in Commonwealth v. Brown, 466 Mass. 676, 691 n. 11 (2013) (e.g. sentences providing for parole eligibility after 60 years and 75 years). Because the sentence does not violate the state or federal constitution, there is no basis under Mass. R. Crim. P. 30(a) to vacate it. Moreover, I was the trial judge in the case of the co-defendant, and because I am familiar with the facts of the case, I conclude that the carefully crafted sentence of Judge MacDonald does not shock the conscience or offend fundamental notions or human dignity. For these reasons, as well as for those set forth in the Commonwealth's opposition, this motion is Denied without a hearing.</p>		
DATE ISSUED 10/26/2016	ASSOCIATE JUSTICE/ ASSISTANT CLERK Hon. Daniel Ford	SESSION PHONE# (413)748-7017

CLERK'S NOTICE	DOCKET NUMBER 0179CR00154	Trial Court of Massachusetts The Superior Court 
CASE NAME: Commonwealth vs. Fernando R Perez		Laura S Gentile, Clerk of Courts
TO: Elizabeth Caddick, Esq. 3 Bessom Street #155 Marblehead, MA 01945		COURT NAME & ADDRESS Hampden County Superior Court Hall of Justice - 50 State Street P.O. Box 559 Springfield, MA 01102
<p>You are hereby notified that on 10/26/2016 the following entry was made on the above referenced docket:</p> <p style="text-align: right;">#25.D</p> <p>Endorsement on Motion for Relief Pursuant to Mass. R. Crim. P. 30(a), (#80.0): DENIED Denied without a hearing. See endorsement on identical motion filed in Docket No. 2001-120.</p>		
DATE ISSUED 10/26/2016	ASSOCIATE JUSTICE/ ASSISTANT CLERK Hon. Daniel Ford	SESSION PHONE# (413)748-7017

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

SUPERIOR COURT
No. HDCR2001-00120
~~No. HDCR2001-00154~~

HAMPDEN COUNTY
SUPERIOR COURT
FILED

NOV 10 2016

[Signature]
CLERK OF COURTS

COMMONWEALTH

v.

FERNANDO PEREZ

Denied ✓
[Signature]
11/15/16

MOTION TO RECONSIDER DENIAL OF MOTION FOR RELIEF PURSUANT TO
MASS. R. CRIM. P. 30(a)

The defendant, Fernando Perez, respectfully requests that this court reconsider its denial of his Motion for Relief Pursuant to Mass. R. Crim. P. 30(a), and in support states:

1. On October 26, 2016, this court denied the defendant's Motion for Relief Pursuant to Mass. R. Crim. P. 30(a), stating that the defendant's sentence with a parole eligibility of 27.5 years "is not the functional equivalent of a life sentence without parole, and therefore that the sentence is not constitutionally infirm."

2. Respectfully, Mr. Perez did not argue that his sentence was the functional equivalent of a life sentence *without* parole. He stated that juveniles convicted of first degree murder are now eligible for parole after serving fifteen years, and argued:

Fernando Perez has served fifteen years in prison. While other adolescents who committed first degree murder at the time of Perez's lesser crimes are now eligible for potential release after parole hearings, Perez will not be eligible for a parole hearing for another twelve and one half years. This untenable distinction is fundamentally unjust and cannot be reconciled with the requirement, under art. 26 and the Eighth Amendment . . .

3. This court also noted that he was the trial judge of Mr. Fernandez's co-defendant, his uncle [Tito Abrante]. Attached is the sentencing hearing of Tito Abrante, where the Commonwealth argued that Abrante was more culpable because he was older,

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

SUPERIOR COURT
~~No. HDRCR2001-00120~~
No. HDRCR2001-00154

HAMPDEN COUNTY
SUPERIOR COURT
FILED

NOV 10 2016

[Signature]
CLERK OF COURTS

COMMONWEALTH

v.

FERNANDO PEREZ

Denied ✓
[Signature]
11/15/16

MOTION TO RECONSIDER DENIAL OF MOTION FOR RELIEF PURSUANT TO
MASS. R. CRIM. P. 30(a)

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COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT NO. DAR _____

APPEALS COURT NOS. 2016-P-1625 AND 2016-P-1624

COMMONWEALTH

v.

FERNANDO PEREZ

CERTIFICATE OF SERVICE

I certify that on December 13, 2016, I served two copies of the Application for Direct Appellate Review by mailing via the United States Post Office, first class postage paid to:

Katherine E. McMahon, ADA
Office of the District Attorney/Hampden
Hall of Justice/Tower Square
50 State Street
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